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EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

DEC 12 1978

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer

Civil Service Commission  
Department of Justice  
Department of Defense  
Department of Health, Education,  
and Welfare

SUBJECT: Department of State proposed bill concerning  
retirement benefits for certain spouses,  
which the Department wishes to submit to the  
96th Congress.

(NOTE: S. 3230 and H.R. 8771 referred to in State's  
attached letter, are 95th Congress bills. A copy of  
S. 3230 is attached; H.R. 8771 was enacted, amended,  
as P.L. 95-366.)  
The Office of Management and Budget requests the views of  
your agency on the above subject before advising on its  
relationship to the program of the President, in accordance  
with OMB Circular A-19.

A response to this request for your views is needed  
no later than c.o.b. January 11, 1979.

Questions should be referred to Hilda Schreiber  
(395-4650 ) or to Phoebe Felk (895-4702 ),  
the legislative analyst in this office.

Naomi R. Sweeney, for  
Assistant Director for  
Legislative Reference

A BILL

To further amend the Foreign Service Act of 1946 to provide benefits to certain divorced spouses.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,  
That the Foreign Service Act of 1946 is amended by adding the following new Part at the end of title VIII (22 U.S.C. 1061-1121) to read as follows:

"Part K -- PAYMENTS TO DIVORCED SPOUSES

"SEC. 883. (a) When used in this section, unless otherwise specified, the term --

"(1) 'Court' means any court of any State or the District of Columbia or any territory or possession of the U.S.

"(2) 'Participant' includes former participant.

"(3) 'Divorce' includes annulment or legal separation.

"(4) 'Former spouse' means a person who was formerly married to an officer or employee of the Foreign Service of the United States for at least 10 years while such officer or employee was so employed.

"(b) (1) Finding: Whereas Foreign Service spouses traditionally make many contributions to advance United States interests abroad, share the hardships of living abroad with their Foreign Service employee-spouses, and have limited opportunity to maintain separate careers, it is reasonable to conclude that spouses, in a real sense, have earned a share of Foreign Service annuities.

"(2) In the event of a divorce of a Foreign Service officer or employee, a court when applying this section is directed to give full consideration to the foregoing finding when making a property settlement and determining the share, if any, of annuity and survivor annuity to which the former spouse shall be entitled.

"(3) Payments from the Fund under this title which would otherwise be made to a participant, annuitant or surviving wife or husband based upon service of a divorced participant shall be paid (in whole or part) to a former spouse of the participant if and to the extent expressly provided for in the terms of any court decree of divorce, or the terms of any court order or court-approved property settlement agreement incident to any court decree of divorce.

"(c) The Secretary shall accept an election from a participant at the time of his or her divorce, or at any other time as may be specified by the Secretary by regulation, to provide a survivor annuity to his or her former spouse with a proviso that such election may not be changed or revoked as long as the former spouse is alive except as specified in the election. Such an election made before a participant becomes entitled to an annuity may provide for payment of a designated percentage of the maximum survivor annuity the participant may elect under section 821(b) upon his or her retirement. Such an election may also provide for the payment of a survivor annuity to any current spouse

or former spouse who is qualified when the employee dies, and if more than one is then qualified, for the elected survivor benefit to be divided in a designated way between those qualified. Such an election will commit the participant to accept a reduction in annuity of at least the amount required under the formula in section 821(b)(1) or, when applicable, 821(i) in order to provide the elected survivor benefit. If less than 100% of the maximum survivor annuity has been committed to the former spouse, the participant may elect to provide any remaining portion under other applicable sections of this title.

"(d) If a participant who has made an election under subsection (c) dies before becoming eligible for an annuity under conditions entitling a surviving spouse to a survivor annuity, any former spouse, if then qualified, shall receive the portion of the survivor annuity designated in such election(s). Such survivor annuity shall be computed in accordance with section 832(b) and, if applicable, section 832(f).

"(e) Any payment under this section shall be based upon the annuity in effect at the time of divorce or, if none, which first becomes effective following the divorce. A former spouse or surviving former spouse shall not be entitled under this section to any portion of an annuity earned by a period of employment, such as recall or reemployment, that commences following a separation from the Service that occurs after the divorce. If an annuity is reduced under section 872 during a period of reemployment, a former

spouse entitled to a share of the annuity pursuant to section 83(b)(3) shall be entitled to receive the same share of the reduced annuity.

"(f)(1) No payment shall be made under this section to former spouse while such former spouse is remarried if the remarriage occurred before the former spouse became age 60.

"(2) Any portion of a former participant's annuity being paid to a former spouse shall revert to the former participant effective on the date the former spouse remarries prior to age 60 and that former spouse shall not be entitled to a subsequent share of the participant's annuity under this section.

"(3) A former spouse who has remarried prior to age 60 and who is married at the time he or she would otherwise become qualified for a share of a participant's annuity or of a survivor annuity under this section shall not be eligible for title to such annuity.

"(4) Payments under this section shall not become effective prior to receipt by the Secretary of written notice of the applicable court decree, order, agreement, or election. Section 822(b) shall apply with respect to payments of annuities to former spouses and surviving former spouses. Unless otherwise specified herein, annuities payable under this section to a former spouse or surviving former spouse shall commence, terminate, be reinstated, and adjusted pursuant to sections 821(b)(2) and (h), 822(a), and 882.

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"(5) Any payment under this section to a person bars recovery by any other person."

(b) The amendments made by paragraph (a) of this section shall only apply to payments made from the Foreign Service Retirement and Disability Fund after the date of enactment of this Act.

Dear Mr. Chairman:

We very much appreciate the opportunity afforded by your letter of June 29, 1978, to comment on S. 3230, a bill to provide retirement benefits to divorced spouses of Federal employees.

The Department is strongly in favor of legislation to provide equity in this area which is the objective of S. 3230. However, we believe this bill would be too harsh on employees in certain cases. For example, we unfortunately have cases where a spouse deserts a Foreign Service employee after having been married to the employee, at least legally, for many years. It would not be fair to allow such a spouse to automatically receive 50 percent of the employee's retirement annuity, as might result under the formula in S. 3230. We believe that each case should be examined on its merits with individual needs and circumstances taken into account. This can be done by a Court at the time the divorce is obtained and a property settlement is made. This is the approach taken by H. R. 8771, another bill on this subject which has been passed by the House, which, if enacted, would apply to the Foreign Service unless modified by special Foreign Service legislation. Unfortunately, H. R. 8771 falls short in two respects with respect to Foreign Service needs. Accordingly, we are enclosing draft legislation which we recommend be enacted to meet the special Foreign Service requirements.

Foreign Service spouses have a special need for protection in this area. Most, of course, are women. They have spent the past years supporting their husbands' careers and advancing the interests of the United States abroad. They have had little opportunity to develop marketable skills and careers of their own

The Honorable  
John Sparkman, Chairman,  
Foreign Relations Committee,  
United States Senate.

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because of frequent international moves, employment prohibitions attached to their diplomatic status, cultural and economic constraints abroad, and lack of training in the language of the host country.

Women who have devoted their lives to working with their husbands in the Foreign Service are virtually without protection if they are divorced. They lose all retirement benefits and insurance protection, and frequently have no way to support themselves. They do not have the protection accorded other United States citizens by the Social Security System.

When making property settlements in divorce cases involving Foreign Service spouses, the Courts need to be aware of these special contributions and circumstances of Foreign Service spouses. Our recommended language includes a paragraph directing the Courts' attention to these factors.

Secondly, because of these factors, Foreign Service spouses who become divorced after long years in the Foreign Service deserve survivor protection. H. R. 8771 does not provide this and the formula in S. 3230 is an arbitrary one allowing no discretion. Our recommended language would make it possible for employees, at the time of a divorce, to voluntarily designate a divorced spouse for all or a portion of their survivor benefits. Such action by the employee could be taken into account by a Court when making the overall property settlement. Our proposal would also authorize the Court to award a portion of any survivor benefit already elected by the employee prior to the time of divorce, as would be the case when divorce occurs after retirement.

This amendment generally would not create an additional benefit but would simply provide for the sharing of an existing benefit, at little or no additional cost to the Foreign Service retirement fund. The only feature of the amendment that would create an additional cost would be the authorization of a survivor benefit to a divorced spouse in cases where the employee has not remarried. At the present time, no annuity is payable in these cases. We estimate this would increase



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the normal (annual) cost of the Foreign Service retirement system by .03 percent per year and the unfunded liability of the Fund by \$2.1 million to be amortized over 30 years at the rate of \$137,000 per year.

The Office of Management and Budget advises that from the standpoint of the Administration's program there is no objection to the submission of this report.

Sincerely,

Douglas J. Bennet, Jr.  
Assistant Secretary for  
Congressional Relations

Enclosure:

Draft Legislation.

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# ROUTING AND RECORD SHEET

SUBJECT: (Optional)

OLC #78-3637

OLC RECORD COPY

OMB

F [Redacted]

EXTENSION

NO.

Assistant Legislative Counsel

DATE 19 December 1978

TO: (Officer designation, room number, and building)

DATE

RECEIVED

FORWARDED

OFFICER'S  
INITIALS

COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

1. [Redacted]  
Deputy Director of  
Personal for Special  
Programs  
5E56

Hilda Schreiber, OMB, sent the attached to us informally for information. She left it completely open if we wish to submit formal comments on the proposal. She said that OMB and the Civil Service Commission are definitely against this one; however, there is always a chance that the Senate Foreign Relations and House International Relations Committee may support it over the objections of the Administration.

Please look it over and give me your reactions.

8.

[Redacted]

cc: Legislation Staff

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FORM  
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